

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT HEGARTY,
Plaintiff,

v.

TRANSAMERICA LIFE INSURANCE
COMPANY,
Defendant.

Case No. [19-cv-06006-MMC](#)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

Re: Doc. No. 25

Before the Court is defendant Transamerica Life Insurance Company's ("Transamerica") Motion to Dismiss, filed December 20, 2019. Plaintiff Robert Hegarty ("Hegarty") has filed opposition, to which Transamerica has replied.¹ Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.²

For the reasons stated at the Case Management Conference conducted May 15, 2020, the Court cannot find, based on the arguments made in the briefing and materials filed to date, that, as a matter of law, Hegarty's claims are "barred by the doctrines of release and/or res judicata" (see Doc. No. 25 at 7:3-4), or that, as a matter of law, Transamerica "did not 'guarantee' that cash value increases would be credited in years

¹ In connection with their respective filings, both parties requested the Court take judicial notice of various documents, which requests, with one exception, are unopposed and, consequently, with that one exception, hereby GRANTED. The one exception is Hegarty's objection to Transamerica's request for judicial notice of Exhibit G to the Declaration of Kevin J. McMahon, which objection is hereby SUSTAINED. Had the Court not so ruled, however, the result reached herein on the Motion to Dismiss would remain unchanged.

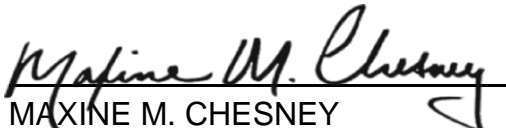
² On March 18, 2020, the Court took the motion under submission.

30 and 40" (see id. at 7:9-10).

Accordingly, the Motion to Dismiss is hereby DENIED, and Hegarty's Motion for Preliminary Injunction is hereby SCHEDULED for hearing on June 19, 2020, at 9:00 a.m., at which proceeding the parties will have the opportunity to elaborate on the arguments made in support of their respective positions with regard to any release of claims and the proper construction of the insurance contract.³

IT IS SO ORDERED.

Dated: May 18, 2020


MAXINE M. CHESNEY
United States District Judge

³ As the briefing in the Motion for Preliminary Injunction was complete prior to the above-referenced conference, the parties may, if they so elect, submit, no later than June 5, 2020, additional declarations and exhibits (including, if available, the "explanatory notes" referenced in the Certificate issued August 8, 1989 (see Doc. No. 1 at 92)).